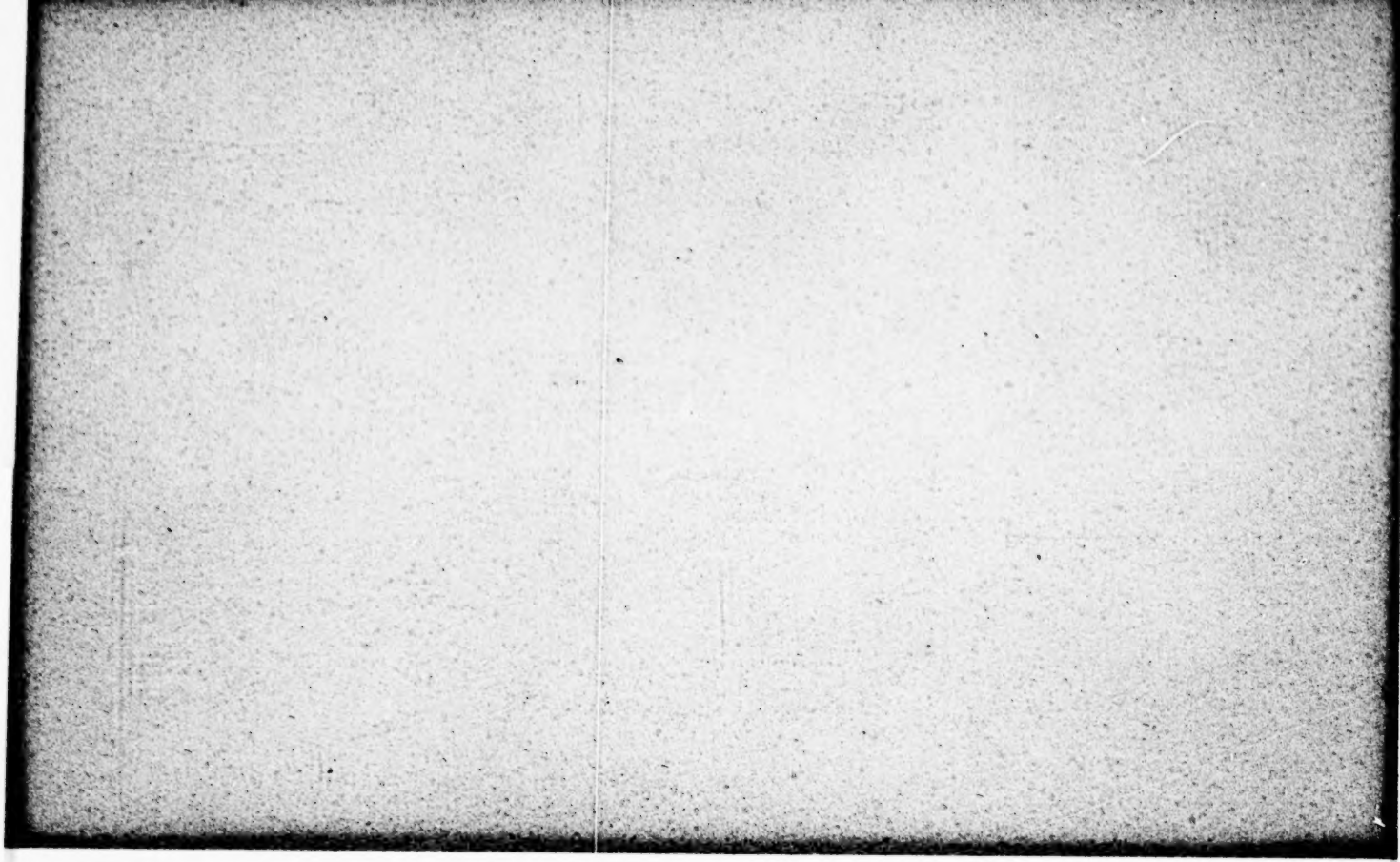

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NO. 74-457

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

ARNOLD L. CRANE,

Petitioner,

vs.

INDUSTRIAL COMMISSION OF ILLINOIS and CORBETTA CONSTRUCTION COMPANY,

Respondents.

PETITION FOR REHEARING

ARNOLD L. CRANE
Petitioner Pro Se
1745 West Pratt Blvd.
Chicago, Illinois 60626
(312) 973-5821
(312) 443-6196

Date: January 2, 1975

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

Appealed to Illinois Supreme Court,
No. 45829
From Circuit Court, Cook County, Illinois
No. 71 L 9017
From Illinois Industrial Commission,
No. 784 019

NO. 74-457

ARNOLD L. CRANE,

Petitioner,

vs.

INDUSTRIAL COMMISSION OF ILLINOIS and
CORBETTA CONSTRUCTION COMPANY,

Respondents.

PETITION FOR REHEARING

The Petitioner, ARNOLD L. CRANE, respectfully prays that this Honorable

Court grant rehearing and reconsideration of its decision of December 9, 1974 in the above entitled cause. The following reason and ground is respectfully shown.

The Illinois Supreme Court rendered its decision in the instant case on March 29, 1974, and 183 days later on September 27, 1974, the Court again rendered a decision relative to Section 12 of the Illinois Workmen's Compensation Act, Board of Education of City of Chicago v. Industrial Commission, 317 NE 2d 497 (1974). In the Board of Education decision, the Court strictly adhered to and enforced Section 12, whereas, in the instant case, the Court refused to enforce Section 12. In essence, the rationale used by the Court was that the Board (defendant) cannot have its cake and eat it too, but in the case at bar, the

Court allowed the defendant to have the cake and eat it too.

Because of the Doctrine of Separation of Powers, the legislature cannot abdicate its function to the judiciary by passing statutes which operate at the discretion of the courts or under which the Courts are allowed to determine the conditions under which the statute will be enforced. The Court should not be unmindful that due process questions under the Federal Constitution may be presented either by the failure of a state to follow its own rules of law or by state rules of law themselves serving as a deprivation of due process.

If the obvious meaning of a statute should be followed by harsh consequences such a result cannot influence the courts in administering the law. The respon-

sibility for the justice or wisdom of legislation rests upon the legislature, and it is the province of the courts to construe and not to make the laws.

In Burke v. Industrial Commission, 15 NE 2d 305, (1938), the Court said:

> "In seeking intent of the legislature which enacted statute, courts consider the language used, the evil to be remedied, and the object to be attained."

It is the obligation of the state courts, to guard, enforce and protect every right granted or secured by the constitution of the United States and the laws made in pursuance thereof, whenever these rights are involved in any suit or proceeding before them, for the judges of the state courts are required to take an oath to support that constitution, and they are bound by it, and the laws of the United States made in

pursuance thereof and all treaties made under their authority, as the supreme law of the land.

Petitioner clearly and concisely points out to the Court (Pet.Br.pps. 92, 93, 94 and 95) the flagrant abuses perpetrated against injured workers by the Commission and the refusal of the Courts to act in a responsible, judicial manner. As Justice Brandeis said in Id at 485 Olmstead v. United States 277, U.S. 438 (1928):

> "Decency, Security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for laws, it invites

> every man to become a law unto himself, it invites anarchy."

In an 1882 decision, United States v. Lee, 106 U.S. 196, 220, 1 S.Ct. 240, 261, 27 L.ed 171, the Supreme Court said:

> "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it. It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives."

Petitioner quotes the last paragraph of Attorney Cohn's letter to his client, Consolidated Mutual Insurance Company, (Pet.Br.pg. 74), as follows:

> "It appears that Judge Egan is also very wary of Mr. Crane and is afraid of setting Mr. Crane off once again. In addition,

> I think he wants to have on the record all of Mr. Crane's peculiar notions so that a reviewing court will realize that there was no relief which Judge Egan could have given Mr.Crane under any circumstance."

In the aforementioned letter Cohn made a statement of fact, which is capable of the quality of truth or falsity, and was made by one of the co-conspirators, in furtherance of the conspiracy. Cohn must have a bona fide reason to make the statement. Knowledge in the mind of another is a subjective thing. It may be inferred or gathered from the outward manifestations, by the words or acts of the party charged with knowledge and from the facts and circumstances surrounding or attendant upon the act with which it is charged to be connected. It may be proven by all the facts and circumstances disclosed by the evidence taken in connection with the case.

This is another Overt Act by the defendants in the furtherance of the continuing conspiracy or a renewable conspiracy and, either way, the veracity and credibility of Louis J. Cohn, atterney for the insurance carrier, is still clearly destroyed unless he can prove, by the entire record:

1. That there are NO reversible errors in the entire record;

2. That the determination made by the Illinois Industrial Commission is not atainst the manifest weight and preponderance of the evidence.

Petitioner respectfully disagrees with Cohn's contentions. Petitioner has proved his case by the manifest weight of the evidence and the courts are absolutely in error in not receiving into evidence documentation that clearly

substantiates absolute proof of the erroneous decision made by the Commission.

The Commission allowed 37-5/7 weeks of temporary total disability (Pet.Br. App.pg.14) which was sustained by the reviewing courts. If a proper foundation had been laid with relevant, legal evidence could it have been arbitrarily disregarded and rejected as it was in the instant case. The position of the Commission is patently untenable, by attacking the credibility of petitioner and respondent's own witnesses without any justification whatsoever.

In Gideon v. Wainwright, 372 U.S. 335 (1963), the Court said:

> "* * * Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence."

In Larsen v. Glos, 85 NE 926 (1908) the court said:

> ". . . that neither the court nor the jury may reject uncontradicted testimony which is neither impeached nor intrinsically improbable."

The same rationale was used in Urban v. Industrial Commission, 214 NE 2d 737 (1966) in an opinion by the Illinois Supreme Court.

In C. R. Winn Drilling Co. v. Industrial Commission, 203 NE 2d 904 (1965) the court said:

> ". . .Temporary disability exists from the time of the injury until the employee is as far restored as the permanent character of his injury will permit. It is easy to determine when the period begins but it is not always possible to determine with mathematical exactness when it ends."

The Illinois Industrial Commission proceedings became a sham, mockery and a farce, as conclusively established by the record.

When quasi judicial proceedings sink to the unconscionable level this case has and the state courts refuse to put a stop to such proceedings and disregard their responsibility and duty to treat all citizens of the state alike, it is time that federal review becomes an absolute necessity.

The carrier was clearly cognizant in 1964, of its established liability and the seriousness of petitioner's injury which points to one INEVITABLE or irresistible conclusion. To mitigate this established liability they embarked on an intentional, concerted course of conduct by concocting the fabricated memorandum. To falsely substantiate their position that petitioner was offered the alleged medical treatment, a fabricated memorandum by Phillips and Cohn, acting

in concert, was offered into evidence by Cohn, but of course, at no time was it ever offered to petitioner or any of his attorneys.

It took Cohn approximately 1,285 days after the date of the accident and injury and 1,231 days after the carrier's physician discharged petitioner as being well to fabricate this memorandum (Pet. Br.p.15) and 1,578 days, approximately, to offer this memorandum into evidence. (Pet.Br.p.25)

The workmen's compensation Act is remedial in nature, and it should be liberally construed at all times. In the instant case, the respondent denied that the petitioner suffered a compensable injury, it denied an accident, it denied petitioner access to their medical reports during litigation, it denied and

disputed that petitioner needed medical treatment and Phillips testified on cross-examination (Pet.Br.p.28):

> "According to the information--the letter that you showed me, his opinion was that you needed no treatment and therefore he rendered none."

The record proves to an absolute certainty, petitioner's continuing need for medical care.

Obviously, the refusal of the carrier and their physician to supply their medical records to petitioner clearly establishes, by a preponderance of the evidence in the case at bar, that they have something to suppress. In Brady v. State of Maryland, 83 S.Ct. 1194 (1963), the court said:

> "We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment,

> irrespective of the good faith or bad faith of the prosecution."

In the instant case, the carrier and the courts have persistently refused access to petitioner's medical records, i.e. the actual records of all communications that were made. Due to the nature of the case, it would be advisable to see all communications relative to the subject matter between the doctor and the carrier.

The only intelligent and logical explanation is that the release of these records would be highly prejudicial to the carrier, and place them in an inescapable, untenable position.

An employers liability to provide the necessary medical care contemplated by Section 8(a) of the Act, Ill.Rev.Stat. C. 48, Sec. 138.8(a) is continuous so long as such care is required to relieve the injured employee from the effects

of the injury. Efengee Electrical Supply Company v. Industrial Commission, 36 Ill. 2d 450, 223 NE 2d 135 (1967); Florczak v. Industrial Commission, 381 Ill.120, 44 NE 2d 836 (1942); W. J. Newman Company v. Industrial Commission, 353 Ill.190, 187 NE 137 (1933).

This obligation may extend indefinitely, perhaps for the remainder of the employee's life. Section 8(a) contemplates necessary medical care not only to "cure" but also to "relieve" from the effects of an injury, even if the injury is incurable the employer must continue to furnish medical attention to relieve an employee of pain or other injurious effects. No limitation can be placed upon the time such care shall be furnished in any particular case.

Attorneys acting to secure medical

care for their clients should first direct written notice to the employer stating the need for such care. However, petitioner's attorney Stevenson refused to request medical treatment for petitioner even though his physical condition was deteriorating and approximately 181 days after petitioner's accident and injury Stevenson wrote Dr. Scuderi:

> ". . . I have done nothing in respect of his claim, other than to advise him to seek competent medical treatment". and ". . . I should take some legal steps to protect his rights."

Approximately 1,113 days after petitioner's injury, and after Stevenson had reentered the case, Stevenson withdrew at the suggestion of his partners stating that he could not represent petitioner in a claim in which another client of their office (respondent's insurance carrier) was involved.(Pet.Br.pps.13,14, and 15).

It has been held that where an employer has knowledge of an injury and the necessity for treatment, or is in possession of facts from which he might reasonably conclude or believe that medical care is necessary, such employer cannot avoid liability for the cost and consequences of medical services obtained by the employee on his own as occasioned by the employer's failure or refusal to provide them. Skokie Valley Asphalt Co., Inc. v. Industrial Commission, 45 Ill.2d 333, 259 NE 2d 66 (1970).

Dr. Scuderi treated petitioner for approximately 435 days, from February 24, 1965 to May 4, 1966 and on May 17, 1966 filled out and signed a Continued Disability Report, stating petitioner's condition to be "unimproved" and"petitioner still totally disabled and unable to do any work."

Further, Dr. Scuderi testified as to petitioner's continuous disability. (Pet. Br.pps. 32-36). This testimony of facts and credibility of Dr. Scuderi was completely ignored and disregarded by the Commission and all subsequent reviewing Courts with no sound or unsound reason given.

The Waivers of Premiums from Bankers Life Insurance Company, from September 15, 1965 to January 17, 1973, also conclusively prove petitioner's disability (Pet.Br. pps. 38-39), which also was disregarded and ignored by the Commission and reviewing courts.

When the Commission disregarded and rejected the testimony of Dr. Scuderi as to the length and continuing disability of petitioner, they made another fatal error in attacking the credibility of the doctor.

When the Commission disregarded and rejected Dr. Scuderi's testimony, it was wilfully and maliciously done for four unsound reasons:

1. Because the doctor testified adversly against the defendant's interest,

2. Because petitioner was acting pro se,

3. Because of unconscionable prejudice and discrimination, and,

4. Because ? ?

Where the facts are in real dispute, it is the function of the higher courts, after a trial in the lower court, to review its legal conclusions and, with reference to its finding of fact, to determine whether they rest on sufficient evidence in the record.

The aforementioned facts evidence a clear and concise reason for the fabricated memorandum and the conspiracy.

This Court should not overlook the shrewd proverbial admonition that SOMETIMES TRUTH IS STRANGER THAN FICTION.

On the ground and for the reasons hereinabove stated, we respectfully submit that rehearing should be granted.

Respectfully submitted,

ARNOLD L. CRANE
Petitioner Pro Se

ARNOLD L. CRANE
Petitioner Pro Se
1745 West Pratt Boulevard
Chicago, Illinois 60626
(312) 973-5821
(312) 443-6196